Filed 1/29/10 In re J.C. CA5

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

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| In re J.G.C., a Person Coming Under the Juvenile Court Law. | |
| THE PEOPLE,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>J.G.C.,<br><br>Defendant and Appellant. | F057473<br><br>(Super. Ct. No. JJD060763)<br><br>**O P I N I O N** |

APPEAL from a judgment of the Superior Court of Tulare County. Valeriano Saucedo, Judge.

John F. Schuck, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Michael P. Farrell, Senior Assistant Attorney General, Charles A. French and Jennifer M. Poe, Deputy Attorneys General, for Plaintiff and Respondent.

## INTRODUCTION AND FACTUAL OVERVIEW

On April 18, 2006, a Welfare and Institutions Code section 602 petition was filed alleging that appellant J.G.C., then aged 14, committed the crimes of assault with a deadly weapon and corporal injury to a cohabitant, appellant's 19-year-old resident girlfriend. The petition also alleged that appellant committed the crime of corporal injury to a child, the girlfriend's 16-month-old toddler. Appellant is not biologically related to the toddler. It was specially alleged in connection with all three crimes that appellant inflicted great bodily injury upon the victims.

Four days earlier, the toddler had been hospitalized with major injuries.[1] That evening, appellant was arrested. He was interviewed by police officers Paul Esquibel and Allyn Wightman for approximately 30 to 45 minutes. Appellant waived his *Miranda* rights. (*Miranda v. Arizona* (1966) 384 U.S. 436 (*Miranda*).) Although appellant initially denied injuring the toddler, appellant eventually admitted that he hit and punched the toddler on the torso, back and head on a couple of occasions on April 13 and 14, 2006. He also admitted that he covered the toddler's mouth and pinched its nose so the toddler had difficulty breathing. Appellant further admitted carving "X4" into his girlfriend's arm and burning one of her hands with a cigarette and a lighter. The interview was videotaped and transcribed.

In May 2006, the court suspended proceedings due to a doubt concerning appellant's competency. After a contested competency hearing, appellant was found not

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[1] The toddler was initially treated at an emergency room before being transferred to the intensive care unit at a children's hospital. The treating physician at the emergency room testified the toddler arrived in critical condition and was placed on a ventilator. The toddler's spleen was severely lacerated, a lung was ruptured, and a kidney and the liver were bruised. The toddler had fresh and old bruising across the abdomen, flank and chest wall. The physician testified these injuries were not sustained accidentally.

competent to stand trial. In February 2008, the court found appellant competent and reinstated proceedings.

Appellant filed a motion to suppress his confession (the suppression motion). In relevant part, appellant asserted that his *Miranda* waiver was invalid. After an evidentiary hearing on August 6, 2008, the suppression motion was denied.[2]

A contested jurisdictional hearing was held in January 2009. All of the allegations contained in the petition were found to be true.[3]

In February 2009, appellant was placed on probation and ordered to live in a group home. The maximum confinement time was set at 13 years with credit for 1,007 days time served.

Appellant challenges the denial of the suppression motion. We discern no error and will affirm the judgment.

## DISCUSSION

### The suppression motion was properly denied.

### I. Facts

After being authenticated by stipulation, the prosecutor played the "relevant portion" of the videotape, depicting "the initial conversation followed by the Miranda admonition." Esquibel asked appellant basic identifying questions. Appellant provided his birth date, height, weight, eye color, school name, grade and telephone number.

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[2] At the hearing on the suppression motion, the videotape and the transcript were received into evidence. The appellate record contains a copy of the transcript. On our own motion, we hereby order the appellate record augmented to include the videotape. (Cal. Rules of Court, rule 8.155(a)(1)(A); see, e.g., *People v. Fiu* (2008) 165 Cal.App.4th 360, 373, fn. 14 [appellate record augmented to include crime scene diagram and photographs]; *In re Anthony J.* (1980) 107 Cal.App.3d 962, 972, fn. 6 (*Anthony J.*) [appellate court noted that it listened to tape of interrogation].)

[3] Resolution of the issue presented on appeal does not require recitation of the evidence presented at the jurisdictional hearing.

Appellant said that he did not remember his address because it was new (appellant moved six days prior to the interview). Next, Esquibel separately informed appellant of each constitutional right and asked appellant if he understood the right. Appellant responded affirmatively in each instance. At the conclusion of this process, Esquibel asked appellant if he "underst[oo]d each of these rights I have explained to you? Yes or no?" Appellant replied, "Yes." Then Esquibel asked, "Having these rights in mind, do you wish to talk to me or answer any questions?" Appellant replied, "Yes, sir." Appellant did not express any confusion about his *Miranda* rights or request any clarification.

Esquibel testified for the prosecution. Based on his training, experience and personal observations, Esquibel believed appellant was able to understand the *Miranda* admonitions. He did not think that appellant was mentally impaired. He thought that appellant understood all of the questions posed to him. In Esquibel's opinion, appellant displayed a limited type of criminal sophistication by initially lying before confessing that he hit the toddler and offering an explanation for his initial lie. Appellant did not request the presence of his parents or an attorney. Appellant did not indicate at any time that he wanted to stop the interview. Appellant did not cry or lose his composure.

Dr. Thomas Middleton testified for the defense. Middleton was appointed by the court to assess appellant's competency. He evaluated appellant on August 3, 2006. Middleton testified at the September 2006 competency hearing that appellant was not competent to stand trial. In 2008, Middleton was contacted by appellant's defense counsel to offer an opinion concerning appellant's ability to comprehend and understand the *Miranda* warnings given during the police interview. Middleton reviewed the videotape and written material provided by the defense. Middleton opined that appellant did not understand the *Miranda* warnings and responded automatically to Esquibel's questions. Appellant's ability to understand words was impaired and he had a low level of intellectual functioning. Appellant's "IQ score from Dr. Littleworth was 49." Appellant's executive

functioning was impaired and he did not understand the rights he was waiving. Appellant was not psychologically or emotionally able to stand up to authority figures or withstand any opposition. Middleton did not think that appellant was malingering when his intelligence and competency were assessed. Middleton believed appellant's mental condition would have been stable over time and the testing results he obtained in August 2006 also would have been true in April 2006.

On cross-examination, Middleton agreed that it would be difficult but possible for a mentally retarded person to knowingly and intelligently waive his *Miranda* rights. Middleton was aware that on two prior occasions, at ages 9 and 13, appellant had been read his *Miranda* rights and waived them. Middleton did not find this fact significant. Middleton was aware that on a multiple choice test administered in August 2006, appellant was asked how he would respond if, after stealing something from a store and being arrested, a police officer read each of his rights to him and asked him if he had committed the crime. Appellant chose the answer that he would tell the police he wanted to see his lawyer first. Another question on this test asked appellant what he would do if was arrested after stealing something from a store and his lawyer asked him if he did it. Appellant selected the answer that he would tell the lawyer what happened. Middleton concluded that appellant's responses to these questions did not demonstrate that he understood his *Miranda* rights because appellant did not, in fact, wait to talk to his lawyer. Middleton concluded that appellant has a dependent personality, cannot assert himself and is unable to "follow through on any factual understanding he has of these issues." Middleton did not factor the appellant's romantic relationship with a 19-year-old woman and his regular supervision of her toddler into his analysis. Middleton did not believe appellant's frequent playing of Xbox video games evidenced an understanding "that games have rules" because appellant "learns by doing."

During cross-examination of Middleton, another portion of the videotape was played. Appellant repeatedly denied kicking his girlfriend and said that he only slapped her. Also, appellant denied telling his girlfriend that he would kill her if she reported the abuse to the police, despite repeated attempts by the officer to obtain such an admission. Finally, appellant repeatedly denied possessing a pocketknife.

The court denied the suppression motion. The court reasoned that it was not bound by the prior competency ruling because Middleton's opinion concerning appellant's competency in August 2006 "was a temporal reading of the minor; that is, at that moment in time the minor was not competent." The court "must weigh [Middleton's] opinion in relation to other testimony presented at trial and other evidence, and to determine whether it preponderates." Since Middleton "was simply extrapolating retroactively," from what he learned during the 2006 competency assessment, the court did not find Middleton's testimony convincing. The court concluded that the videotape, the transcript and the overall circumstances of appellant's living arrangements established by a preponderance of the evidence that appellant's *Miranda* waiver was knowing, intelligent and voluntary.

## II. Appellant effectively waived his *Miranda* rights.

"A suspect, having been advised of his *Miranda* rights, may waive them 'provided the waiver is made voluntarily, knowingly and intelligently.' [Citation.]" (*In re Norman H.* (1976) 64 Cal.App.3d 997, 1001 (*Norman H.*).) The prosecution bears the burden of establishing by a preponderance of the evidence that the relinquishment of rights was voluntary and that the suspect's waiver was made with full awareness of those rights and the consequences of the waiver. The validity of a *Miranda* waiver is a factual matter to be decided by the trial judge based on the totality of the circumstances, including both the characteristics of the accused and the details of the interrogation. (*People v. Whitson* (1998) 17 Cal.4th 229, 246-247.) Relevant factors include the details of the interrogation, the minor's age, mental and physical condition at the time of the questioning, education,

intelligence, experience and familiarity with the police. (*Anthony J., supra*, 107 Cal.App.3d at p. 972; *People v. Lara* (1967) 67 Cal.2d 365, 376.) On appeal, the reviewing court accepts the lower court's resolution of disputed facts and its credibility evaluations if they are supported by substantial evidence. (*People v. Cortes* (1999) 71 Cal.App.4th 62, 70.) However, it independently determines whether, from the undisputed facts and those facts properly found by the trial court, the challenged statements were illegally obtained. (*People v. Whitson, supra,* 17 Cal.4th at p. 248.)

Appellant contends the trial court erred by rejecting Middleton's testimony solely because it was "retroactive." We are not convinced. Appellant has taken the court's remark out of context. The court was explaining the basis for its rejection of defense counsel's argument that the court was collaterally bound by the 2006 competency ruling. The court did not refuse to consider Middleton's testimony; it merely found this evidence unconvincing, in part, because Middleton's evaluation of appellant in 2006 did not include consideration of the voluntariness of appellant's *Miranda* waiver. Middleton had to look back in time to make such an assessment and this reduced the credibility of his testimony. We find the trial court's credibility determination to be reasonable and discern no abuse of discretion or legal error.

Next, appellant urges us to rely on his low I.Q. as conclusive proof that he was incapable of intelligently waiving his *Miranda* rights. We are not convinced. It is well-established that a confession is not inadmissible as a matter of law merely because the accused was of subnormal intelligence. Intelligence is only one of many factors to be considered in assessing the validity of the *Miranda* waiver. (*Norman H., supra,* 64 Cal.App.3d at p. 1001.) *Norman H.* upheld a *Miranda* waiver made by a 15-year-old boy with an I.Q. of 47. The court concluded the minor had the capacity to understand the waiver, writing: "A confession of a crime is not inadmissible merely because the accused was of subnormal intelligence, although subnormal intelligence is a factor that may be

considered with others in determining voluntariness. [Citation.]" (*Id*. at p. 1001.) It continued, "Neither a low I.Q. nor any particular age of minority is a proper basis to assume lack of understanding, incompetency, or other inability to voluntarily waive the right to remain silent under some presumption that the *Miranda* explanation was not understood." (*Id*. at p. 1003.) To conclude otherwise would misconstrue and improperly extend the knowing element of the *Miranda* waiver. (*Ibid*.) *In re Brian W*. (1981) 125 Cal.App.3d 590 (*Brian W*.) relied on *Norman H.* to conclude that a 15-year-old boy with an I.Q. of 81 validly waived his *Miranda* rights. (*Id*. at pp. 602-604.) *Anthony J*., *supra*, 107 Cal.App.3d 962, upheld a *Miranda* waiver by a 15-year-old boy who functioned at the mental age of an 11 or 12 year old. (*Id*. at p. 970.) And in *People v. Watson* (1977) 75 Cal.App.3d 384, the court upheld a *Miranda* waiver even though the adult defendant had organic brain damage, schizophrenia and an I.Q. of 65. (*Id*. at pp. 396-397.)

Next, appellant characterizes his lifestyle as bizarre and asserts that it proves his profound emotional disturbance. We reject this self-serving characterization of his living arrangements. Appellant was involved in a romantic relationship with a 19-year-old woman and he regularly participated in caring for her toddler. He did not regularly attend school and spent much of his time playing Xbox video games. These choices were short-sighted but not bizarre or irrational.

Having evaluated the entirety of the evidence presented at the suppression hearing, we uphold the trial court's determination that the People proved by the preponderance of the evidence that appellant's *Miranda* waiver was knowing and voluntary. Appellant had been *Mirandized* on two prior occasions. Appellant lived with an adult woman and assisted in caring for her child. Esquibel testified that appellant appeared to be a normal 14-year-old boy. Esquibel separately read appellant each *Miranda* right and confirmed that appellant understood it. Appellant did not indicate any confusion or lack of comprehension about his rights. Appellant responded appropriately to all of the questions

during the interview. At no time did appellant ask to end the interview, request an attorney or ask for his parents to be present. The interview was relatively brief, lasting only 30 to 45 minutes. The officers did not behave in a coercive or threatening manner. There is no evidence of improper inducement or any indication that the officers took unfair advantage of appellant's ignorance, immaturity or innate lack of intelligence to convince him to waive his *Miranda* rights. Here, as in *Brian W.*,

> "[¶] The record is devoid of any evidence that the minor made his statement after a lengthy interrogation. There was no atmosphere of coercion, no prolonged questioning or coercive tactics, no threats or promises of leniency. He was not threatened, tricked or cajoled into a waiver by any promise of the police. There was no deliberate ploy to 'soften up' the minor. There exists in the record no improper inducements which were the motivating cause for the minor to waive his constitutional rights." (*Brian W.*, *supra*, 125 Cal.App.3d at p. 603.)

Having examined the totality of the circumstances, we conclude the People proved by a preponderance of the evidence that appellant's *Miranda* waiver was voluntary, knowing and intelligent. Consequently, we uphold denial of the suppression motion.

**DISPOSITION**

The judgment is affirmed.

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Levy, Acting P.J.

WE CONCUR:

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Cornell, J.

_____
Hill, J.